**IN THE UPPER TRIBUNAL**
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2024-002310

First-tier Tribunal No: PA/02082/2023

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**
**On the 23 October 2024**

**Before**

**UPPER TRIBUNAL JUDGE MAHMOOD**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**YC**
**(ANONYMITY ORDER MADE)**

Respondent

**Representation:**
For the Appellant: Litigant in Person
For the Respondent: Ms Arif, Senior Home Office Presenting Officer

**Heard at Birmingham Civil Justice Centre on 15 October 2024**

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant is granted anonymity.**

**No-one shall publish or reveal any information, including the name or address of the Appellant, likely to lead members of the public to identify the Appellant. Failure to comply with this order could amount to a contempt of court.**

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## DECISION AND REASONS

1. This is my oral decision which I delivered at the hearing today.

### Introduction

2. The Secretary of State appeals with permission against the decision of First-tier Tribunal Judge Mensah ("the Judge") promulgated on 26 March 2024. For ease in following this decision, I shall refer to the original Appellant as the Claimant and the Secretary of State as the Respondent. The Judge had comprehensively disbelieved the Claimant in relation to his protection claim but had allowed the Claimant's appeal on Article 8 ECHR grounds.

3. Permission to appeal was granted to the Respondent by First-tier Tribunal Judge Lester on 13 May 2024.

### Grounds of Appeal and Documents

4. The Respondent grounds, in summary, state that having found the Claimant had fabricated his protection claim whereby he was seeking to deceive the Tribunal it ought to have meant that he should not have been believed about his alleged relationship. Nor should it have been accepted that the relationship was genuine in respect of an unborn child.

5. I have considered the Respondent's bundle and also an email from the Refugee and Migrant Centre with a birth certificate and some photographs whereby the Appellant contends that a child has been born to him since the hearing before the Judge took place.

### The Judge's Decision and Analysis of the Grounds of Appeal

6. The Judge set out in some detail why she did not believe the Claimant in respect of his protection claim. For example, the Judge said at paragraph 41:

> "I find the Appellant is not a truthful witness. He has invented a false narrative to seek asylum in the United Kingdom. I reject his entire account as fabricated. I find he did not leave Angola for any of the reasons he has presented in his claim. I do not accept the Angolan authorities have any interest in him whatsoever. I refuse his protection claim".

7. Today the Claimant contends that he had not lied and that he told the truth about his protection claim. There is no appeal by the Claimant against Judge Mensah's findings in relation to the protection claim. I thereby have to proceed on a basis that the Judge found the Appellant is not a truthful witness and made up a false asylum claim. To put in in clear terms, the fact that the Judge found the Claimant to have lied about his

protection claim is a finding that is undisturbed. There is no appeal against the dismissal of the protection claim. That part of the claim remains dismissed.

8. In my judgment the grounds of appeal raised by the Secretary of State in respect of the Article 8 EHCR claim are made out. My reasons for coming to this conclusion are as follow.

9. Firstly, at paragraph 50 the Judge said the Claimant's partner thought that the relationship was genuine. That is not the same as the relationship being genuine and subsisting. There is no adequate finding, other that in reality the Claimant's partner was naïve. There is no adequate finding as to whether the Judge accepted there was a genuine and subsisting relationship. The Judge did not take that further step other, than considering that the couple had been together in a relationship, with an oblique reference to the *Razgar* threshold. It was imperative that the Judge took the further step, especially in view of the seriously adverse findings about the Claimant's veracity and truthfulness. Especially when the Judge also said at paragraph 50 as follows, "I am concerned the Appellant's initial motive for getting involved with the partner is to secure status in the United Kingdom".

10. I should also make clear that despite the filing of new documents and photographs for this hearing by the Claimant, I cannot take them into account when I consider the *R (Iran) v Secretary of State for the Home Department* [2005] EWCA Civ 982; [2005] INLR 633 principles. Therefore, in deciding whether there is an error of law in the Judge's decision, I do not take into the Claimant's new evidence in respect of the birth of the child or the birth certificate documentation because those matters were not before the Judge.

11. Secondly, Ms Arif relied on the case of *Younas (section 117B(6)(b); Chikwamba; Zambrano)* [2020] UKUT 129 (IAC) which refers to the Court of Appeal's decision in *Alam v Secretary of State* [2023] EWCA Civ 30. Ms Arif submits, and I agree, that there is no general presumption that the public interest does not require removal where the Claimant meets all the requirements under the Rules, save for immigration status. A more broad and holistic evaluation of competing public interests was still required in the overall balancing exercise to be carried out for the assessment of Article 8 ECHR and Section 117B. At paragraph 6 in *Alam* the Court of Appeal said:

> "The decision in *Chikwamba* is only potentially relevant on an appeal when an application for leave to remain is refused on the narrow procedural ground that the applicant must leave the United Kingdom in order to make an application for entry clearance".

12. In this case the Judge in considering Article 8 referred to the Claimant's partner having her own children and that thereby there would be insurmountable obstacles for her to go to Angola. In reality it was being

said too that the Claimant's partner could not be expected to leave her children behind and to go to live in Angola.

13. Thirdly, in my judgment the Judge failed to consider whether or not the Claimant could return to Angola to make an application for entry clearance. That was a material error of law by the Judge. There was no need for the Judge to consider only whether the Claimant's alleged partner could go with him to Angola. The first step was to consider whether there was any reason why the Claimant could not make an application for entry clearance from abroad. In view of the finding that the Claimant's protection claim was wholly fabricated, then there was no protection reason preventing the making of an application for entry clearance from abroad. There was no need for the Claimant's claimed partner (or her children) to go to Angola for that purpose.

14. For the avoidance of doubt, even if the Judge had concluded that the relationship was genuine and subsisting, the serious adverse credibility findings the Judge made meant that the public interest had to be given considerable weight. Additionally, the Respondent argues that there ought to be no advantage for a Claimant who has used deception to be in the United Kingdom.

15. In the circumstances I conclude that the Judge materially erred in law in respect of her assessment of Article 8 ECHR.

16. I invited the parties to consider what the appropriate disposal ought to be if I was to find that there is a material error of law in the Judge's decision.

17. I have applied *AEB* [2022] EWCA Civ 1512 and *Begum (Remaking or remittal) Bangladesh* [2023] UKUT 00046 (IAC) and have carefully considered whether to retain the matter for remaking in the Upper Tribunal in line with the general principle set out in Paragraph 7 of the Senior President's Practice Statement. I take into account the history of this case, the nature and extent of the findings to be made. In considering paragraph 7.1 and 7.2 of the Senior President's Practice Statement and given the scope of the issues and findings to be made, I consider that it is appropriate that the First-tier Tribunal remake the decision.

18. In my judgment the appropriate venue for the Article 8 assessment is at a rehearing on that single issue at the First-tier Tribunal.

19. For the avoidance of doubt, the Article 3 and the asylum protection claim generally including humanitarian protection remain dismissed. The only matter that will be reconsidered at the First-tier Tribunal is Article 8 ECHR. There shall be retained findings. Those are set out within the decision of the First-tier Tribunal Judge at paragraphs 23 to 41 inclusive.

## Notice of Decision

20. The First-tier Tribunal’s decision which had allowed the Claimant’s appeal based on Article 8 ECHR contains a material error of law.

21. Therefore, the First-tier Tribunal’s decision in respect of Article 8 ECHR (only) is set aside.

22. The re-hearing in respect of the Article 8 ECHR matter shall take place at the First-tier Tribunal.

23. The Judge’s findings in respect of the Claimant’s protection claim are retained findings which can be seen at paragraphs 23 to 41 of her decision. The Judge’s decision to dismiss the Appellant’s protection claim (based on all grounds, including asylum, humanitarian protection and Article 3 EHCR) remains intact. Therefore the Claimant’s protection claim remains dismissed in any event.

**Abid Mahmood**

Judge of the Upper Tribunal
Immigration and Asylum Chamber

**15 October 2024**